

12/14/2000
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BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION
Docket No. 2000-516-C

S. C. PUBLIC SERVICE COMMISSION
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Petition of)
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ADELPHIA BUSINESS SOLUTIONS)
OF SOUTH CAROLINA, INC.)
)
For Arbitration with BellSouth)
Telecommunications, Inc. Pursuant to)
Section 252(b) of the Communications)
Act of 1934, as amended by the)
Telecommunications Act of 1996)

PREFILED REBUTTAL
TESTIMONY OF
ADELPHIA BUSINESS
SOLUTIONS OF SOUTH
CAROLINA, INC.

REBUTTAL TESTIMONY OF EUGENE J. BROWN

John Glicksman
Vice President & General Counsel
Terry Romine
Director of Regulatory Affairs
Adelphia Business Solutions
of South Carolina, Inc.
One North Main Street
Coudersport, PA 16915
(814) 260-3885 (Tel)
(814) 274-8243 (Fax)
e-mail: john.glicksman@adelphiacom.com
terry.romine@adelphiacom.com

Faye A. Flowers
Parker, Poe, Adams,
& Bernstein, L.L.P.
1201 Main Street
Suite 1450
Columbia, S.C. 29201
(803) 255-8000 (Tel)
(803) 255-8017 (Fax)
e-mail: fayeflowers@parkerpoe.com

S. C. PUBLIC SERVICE COMMISSION
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UTILITIES DEPARTMENT

Russell M. Blau
Michael L. Shor
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, DC 20007
202/424-7500 (Tel.)
202/424-7645 (Fax)
e-mail: rmbblau@swidlaw.com
mlshor@swidlaw.com

Its Attorneys

Dated: December 14, 2000

RETURN DATE:
SERVICE: OK *as*

**BEFORE THE
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| Petition of |) | |
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| ADELPHIA BUSINESS SOLUTIONS |) | |
| OF SOUTH CAROLINA, INC. |) | PREFILED REBUTTAL |
| |) | TESTIMONY OF |
| For Arbitration with BellSouth |) | ADELPHIA BUSINESS |
| Telecommunications, Inc. Pursuant to |) | SOLUTIONS OF SOUTH |
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| Act of 1934, as amended by the |) | |
| Telecommunications Act of 1996 |) | |

Q. Please state your name, title, and business address for the record.

A. My name is Eugene J. Brown. I am the Director of LEC Relations for Adelphia Business Solutions, LLC, a parent company of Adelphia Business Solutions of South Carolina, Inc.

My business address is as follows:

Adelphia Business Solutions
1 North Main Street
Coudersport, PA 16915

Q. Are you the same Eugene J. Brown who filed direct testimony in this proceeding?

A. Yes, I am.

Q. What is the purpose of your testimony?

A. I am here to respond to various statements made by BellSouth witness John A. Ruscilli in his direct testimony filed in this docket on December 7, 2000. Specifically, I want to discuss issues 1 and 6 relating to points of interconnection and the facilities connecting them, and issue 3 relating to Internet Protocol Telephony.

ISSUE 1-- (A) MAY ADELPHIA CHARGE ITS TARIFFED RATES TO BELL-SOUTH FOR LEASED FACILITY INTERCONNECTION; (B) IF NOT, SHOULD THE DEFINITION OF SERVING WIRE CENTER PRECLUDE ADELPHIA FROM RECEIVING SYMMETRICAL COMPENSATION FROM BELL-SOUTH FOR LEASED FACILITY INTERCONNECTION?

Q. Why are Issues 1 and 6 related?

A. Issue 6 concerns the location of points of interconnection (POIs) between the Adelphia and BellSouth network. Issue 1 relates to the responsibility for payment for facilities connecting the two networks, and the applicable rates. If the Commission allows BellSouth to designate large numbers of POIs as it proposes, the cost of the required facilities to connect to those POIs will increase, so the relationship between the two issues is clear.

Q. What are BellSouth's proposals on these two issues?

A. On Issue 1(A), BellSouth asks the Commission to rule that both Parties must charge each other the same rates for any leased facilities used by one Party to connect to the other Party's POI, based on a notion of "symmetry." On Issue 1(B), however, BellSouth, asks the Commission to throw "symmetry" out the window and establish unequal rates for leased facilities carrying traffic between the two networks, based on BellSouth's view of the "different functions" performed by each Party. And on Issue 6, BellSouth again ignores its own rhetoric about "symmetry" to propose that Adelphia should bear *all* the costs of interconnecting the two Parties' networks, and BellSouth should bear *none* of those costs, by placing all the POIs for exchange of traffic at BellSouth offices.

Q. Before we turn to the merits of these proposals, do you agree with Mr. Ruscilli's definition of a Point of Interface (POI) on pages 6, 59, and 60 of his testimony?

A. Only partially. In his testimony, Mr. Ruscilli says the POI is the physical interface between the two Parties' networks, and is different from the "Point of Interconnection" which he defines as the "point at which the originating Party delivers its originated traffic to the terminating Party's first point of switching on the terminating Party's common (shared) network for call transport and termination." (p. 6, lines 11-14.) But then, at page 59, he says that the Point of Interface, or physical connection point, is "defined by the FCC as the Point of Interconnection." If I am following this correctly, Mr. Ruscilli seems to be saying that the Point of Interface is really the Point of Interconnection, and the Point of Interconnection is really not the Point of Interconnection. Maybe it's just me, but I find this confusing.

Q. Can you explain *your* understanding of the term POI?

A. Yes. I agree with Mr. Ruscilli that the key issue in this case revolves around the physical location at which the two Parties will interconnect their facilities, and I will call this the "POI." I also agree with him that this is the same concept as the "point of interconnection" or "interconnection point" referred to in various FCC rules.

Q. What does "leased facility interconnection" mean?

A. Since the two Parties operate separate telecommunications networks, the POI must be located either at one Party's premises or at some neutral meet-point, which means that at least one Party (and, in the case of a neutral meet-point, both) will need to provide facilities to connect its premises to the POI. If a Party chooses to lease this connection from

the other Party, instead of building its own transmission facility, that is a “leased facility interconnection.”

Q. On Issue 1(A), did Mr. Ruscilli explain why BellSouth believes both Parties must charge the same rates for leased facility interconnection?

A. Not really. He says twice that both Parties should charge the same rates (or “symmetrical” rates) for leased facility interconnection (pages 3-4, 6), but he never explains why. Considering that BellSouth seems to think that “symmetry” is unimportant with respect to all the other POI issues, it is hard to understand why it takes a different position on this one issue.

Q. Don’t you think it is fair for both Parties to charge the same rates for the same type of facilities?

A. If these two companies were dealing with each other exclusively, that might be a fair way to approach the issue, but that’s not the case. Adelphia has other customers who lease facilities from us, and we have obligations under both Federal and State law to charge tariffed rates for our services without unreasonable discrimination. If we charged a lower rate to BellSouth based on BellSouth’s TELRIC costs, our other customers would have good reason to be upset.

Q. BellSouth suggests that it would be willing to pay Adelphia’s tariffed rates if Adelphia were required to pay BellSouth’s tariffed rates for leased facility interconnection. Would this solution be acceptable to you?

A. No, because that would create a situation where BellSouth charged more to Adelphia than to other CLECs for comparable facilities, which would also be discriminatory. As I understand it, Sections 251(c)(2) and 252(d)(1) of the Communications Act, and the FCC

rules implementing these sections, require incumbent LECs to provide interconnection to CLECs at TELRIC-based rates. BellSouth cannot escape this obligation by making up a new “symmetry” rule that would result in discriminatory pricing. Furthermore, Section 251(c)(2) does *not* apply to non-incumbent LECs, and the FCC has specifically ruled that State commissions may not apply the Section 251(c) obligations to CLECs. 47 CFR § 51.223(a).

Q. So, what action should the Commission take on Issue 1(A)?

A. The Commission should adopt Adelphia’s proposal, under which BellSouth will charge TELRIC rates for leased facilities interconnection as required by the Communications Act, and Adelphia will charge its tariffed rates as required by Federal and State law.

Q. What is BellSouth’s position on Issue 1(B)?

A. Issue 1(B) relates to the rate *structure* for leased facility interconnection, as opposed to Issue 1(A) which relates to the rate *levels*. On this issue, BellSouth argues that Adelphia should not be able to charge the same rate elements for leased facilities as BellSouth does, because Adelphia does not perform the same “functions” as BellSouth.

Q. What functions are involved in leased facility interconnection?

A. As I have already explained, leased facility interconnection provides a direct connection between one Party’s network and a POI located at the other Party’s facility. This is a full-time, dedicated, point-to-point transmission facility. Therefore, the relevant functions are point-to-point dedicated transport and, optionally, multiplexing.

Q. Do you agree with Mr. Ruscilli's testimony that BellSouth performs different or additional functions in providing leased facility interconnection than Adelphia does?

A. No. Mr. Ruscilli says, "With a single switch in the state, Adelphia cannot transport traffic between switches. Adelphia, therefore, should not be allowed to charge rate elements designed to compensate for transport of traffic between switches." (page 4, lines 14-17, emphasis in original.) With all due respect, this makes no sense at all. Although it is true that Adelphia will initially deploy only one switch in South Carolina, this is completely irrelevant to the pricing of leased facility interconnection. As I have just explained, the interconnection facility is *dedicated*, not switched. Further, Mr. Ruscilli testifies about "transport services necessary to complete a call between a BellSouth end user and an Adelphia end user between local calling areas" (page 5, lines 4-6.) This totally misses the point – we are not talking about transport of traffic between end users, but only about the dedicated facility connecting one Party's network to the other Party's POI. Mr. Ruscilli seems to be talking about the "transport" component of "transport and termination," or reciprocal compensation, which is not the same as leased facility interconnection. Under the FCC's rules, § 51.701, "transport and termination" of local traffic *begins* when the traffic is delivered to the POI; but leased facility interconnection is a method of delivering that traffic *to* the POI. Although the leased interconnection facility is connected to switches at either end, it is not a switched facility itself; it is a dedicated point-to-point connection between the two Parties' networks.

Q. What action should the Commission take on this issue?

A. Adelphia asks the Commission to reject BellSouth's proposal for unequal rates, because it is based on incorrect assumptions. In reality, both Parties perform identical functions

when providing dedicated leased facilities, and therefore both should be allowed to charge the same rate elements.

**ISSUE 3 -- SHOULD INTERNET PROTOCOL TELEPHONY BE
EXCLUDED FROM LOCAL TRAFFIC SUBJECT TO RECIPROCAL
COMPENSATION?**

Q. What is BellSouth's proposal on "Internet Telephony" in Issue 3?

A. Contrary to the position stated in BellSouth's previous filings, Mr. Ruscilli now agrees with Adelphia that the Commission should not adopt BellSouth's proposed contract language including "Internet Protocol (IP) Telephony" in the definition of switched access traffic. Instead, Mr. Ruscilli urges (and I agree) that the Commission should defer any decision on this topic until the FCC determines whether this traffic, or any subset of it, constitutes interstate switched access. (page 38, lines 12-14) However, he then "also urges the Commission to find, on this issue, that regardless of the FCC's decision on switched access, reciprocal compensation is not due, under any circumstance, for non-local IP Telephony." (page 38, lines 14-17)

Q. Does Adelphia find Mr. Ruscilli's proposal acceptable?

A. No. The second part of BellSouth's new proposal doesn't make sense. Traffic that is terminated over the public switched telephone network is either local, in which case reciprocal compensation rates apply, or interexchange, in which case switched access rates apply. BellSouth's proposal would create a "compensation vacuum" under which some IP Telephony traffic might conceivably be excluded from switched access by a future FCC decision, but be excluded from reciprocal compensation by this Commission. This will just lead to future uncertainty and controversy, and should be avoided.

Q. Do you have any other comments on Mr. Ruscilli's testimony with respect to Issue 3?

A. I think it is important for the Commission to consider three things: First, "Voice over Internet Protocol" (VoIP) is part of an amalgam of converging digital technologies; VoIP is not simply a phone call by other means. Second, there is no known method of tracking and segregating VoIP traffic and BellSouth has not proposed such a method. Third, BellSouth is proposing that the Commission insert itself into this new and rapidly changing area of technology and that the Commission require that Adelphia receive zero compensation for the termination of this undefined class of traffic.

Mr. Ruscilli makes an effort in his testimony to distinguish between "Phone-to-Phone IP Telephony" and "Computer-to Computer IP Telephony." However the definition of "Switched Access Traffic" proposed by BellSouth does not draw such a distinction. The definition is so vague as to encompass an uncertain class of traffic.

Also, as I understand, there is no way to separate or segregate these two types of traffic from one another. In addition, this distinction belies the fact that "Phone-to-Phone IP Telephony" utilizes gateways and servers, that to date have been completely unregulated, and that such "voice over the net" calls simply represent another form of an advanced product being provided through these gateways and servers.

In fact the definition is so broad that, even if the Commission issued a ruling on Issue 4 that reciprocal compensation is owed for ISP-bound traffic, this definition could be used to exclude such payment. Mr. Ruscilli states in his testimony at 37:20-21 that "IP Telephony and ISP-bound traffic are not the same thing, and should not be confused." However, he states neither how they are different nor how they may be distinguished.

Q. What should this Commission do with this BellSouth proposal?

A. The Commission should preserve the status quo and refrain from accepting BellSouth's invitation to assert jurisdiction over the area. It can do this by adopting Adelphia's proposed contract language.

ISSUE 6—HOW SHOULD THE PARTIES DEFINE THE POINTS OF INTERFACE FOR THEIR NETWORKS?

Q. What is your understanding of BellSouth's proposal on Issue 6?

A. Under BellSouth's proposal, BellSouth would be able to require that all POIs be established at BellSouth premises, and it would be able unilaterally to designate additional POIs where Adelphia would have to pick up local traffic at its own expense.

Q. Why does it matter where the POIs are located?

A. As I explained earlier, the POI is the physical connection between the two Parties' networks. It is therefore advantageous for Party A to establish the POI at its own premises, because then Party B has to bear the costs of facilities connecting its premises to the POI. Under BellSouth's proposal, the POI would *always* be at a BellSouth location, and therefore Adelphia would always bear the cost of the connecting facilities. The unfairness in this is obvious, and I have to note that Mr. Ruscilli never mentions the word "symmetry" in this section of his testimony.

Q. But the opposite solution of placing the POI at Adelphia's premises would seem to be unfair to BellSouth. How can the Commission resolve the conflicting interests of the two carriers in this situation?

A. Under Adelphia's proposal, each Party could designate its own (single) POI in each LATA at which it will accept traffic originated by the other Party. So Adelphia could

designate a POI on its premises, but only for traffic that it terminates; and BellSouth could designate a POI on its premises, but only for traffic that it terminates. This way, both Parties would bear some of the costs of the interconnecting facilities.

Q. How would BellSouth's proposal differ from Adelphia's?

A. Under BellSouth's proposal, the originating Party (not the terminating Party as in our proposal) would designate the POI. This would require the terminating Party to extend its facilities to pick up local traffic for transport and termination, even though the reciprocal compensation rates do not provide any means of recovering this additional cost. In effect BellSouth is requiring Adelphia to build out its network beyond its current configuration in order to pick-up BellSouth's own traffic. Under BellSouth's proposal this would be the case even if Adelphia did not have any customers in a particular area, but one BellSouth customer placed a call to an Adelphia customer located elsewhere.

This issue has broad competitive implications, in that the competition between BellSouth and Adelphia does not begin on a level playing field. Instead it pits BellSouth's ubiquitous network against Adelphia, which as a new entrant must construct (or lease or acquire) new facilities for access to each POI.

BellSouth's proposal seeks to impose interconnection requirements on Adelphia which would require it to develop a network which is an overlay of the existing BellSouth network, which took one hundred plus years of monopoly to construct. Adelphia, as a new entrant, should be free to deploy least cost, forward-looking technology. In allowing it to do so the Commission would not be, as Mr. Ruscilli suggests, shifting Adelphia's costs to BellSouth and its customers. Instead it would be recognizing the reality of the situation with which it is presented, the advantage history has given BellSouth, and

the law, which (as Mr. Gates will discuss in more detail in his rebuttal testimony) requires that competitors such as Adelphia be given a chance to interconnect in an efficient manner. Initial interconnection at the tandem level and at a single POI per LATA is crucial to providing new entrants this flexibility.

As I stated in my direct testimony, Adelphia agrees that sound engineering principles, and a need to stay competitive, may eventually dictate that Adelphia add new POIs at other BellSouth switches. However, there is no reason for BellSouth to demand, or the Commission to compel, interconnection at any point unilaterally selected by BellSouth for its originated traffic. Taken to its extreme, this could require Adelphia to interconnect at every end office or every local tandem even if the amount of traffic originating from BellSouth customers served out of those offices is relatively small.

Q. Mr. Ruscilli claims, on page 71 of his testimony, that Adelphia is trying to foist onto BellSouth the costs of Adelphia's network design. Do you agree?

A. No. I discussed this argument in my direct testimony at page 6. The fact remains that BellSouth created its current structure of numerous switching centers within each LATA. It simply makes no technological, economic, or legal sense for Adelphia to mirror BellSouth's legacy network by establishing dedicated connections to each BellSouth tandem, end office or local calling area regardless of traffic volume. This would render any benefit conferred by the law in allowing CLECs to choose interconnection at any technically feasible point, an empty promise, not just to CLECs, but to the residents of South Carolina who were intended to ultimately enjoy the benefits of robust competition. This is especially true considering the BellSouth proposal places no limits on BellSouth's designation of POIs.

Once again, the question of whether multiple POIs need to be established should be determined through consideration of specific network concerns by the planners responsible for running the networks. Because the network planners are most familiar with the network architecture, traffic volumes, and forecasts, Adelphia prefers that the establishment of additional POIs be left to the discretion of the network planners from both companies, consistent with sound engineering principles, and on a case by case basis.

Q. What action do you recommend the Commission take?

A. The Commission should leave the decision to establish additional POIs to the discretion of the network planners against the backdrop of a contract requirement of one POI per LATA without giving either party the unilateral ability to designate new POIs. If the parties cannot agree on additional POIs there are procedures set forth in the agreement that can be used to resolve the dispute.

Q. Does this conclude your testimony?

A. Yes, it does.